

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
)
vs)
)
FRANK DEPERGOLA and)
ARMANDO BOTTA)
Defendants)

05 CR 30002-MAP

AFFIDAVIT OF MICHAEL L. FOY IN SUPPORT OF MOTION TO
CONTINUE TRIAL DATE

I, Michael L. Foy, being duly sworn, say and depose as follows:

1. I am attorney of record for the Defendant, Frank Depergola and am therefore familiar with the facts and circumstances of this case;
2. The above referenced criminal matter is scheduled for trial commencing on December 12, 2005.
3. I have filed a Joint Motion to Continue Trial with co-counsel for the Defendant, Armando Botta. This affidavit is in support of said motion.
4. Counsel is requesting the continuance for the following reason:
 - a. In March of 2005, I was diagnosed with two (2) herniated discs in my cervical spine, two (2) in my lumbar spine, bone spurs on my facet joints and spinal stenosis with nerve impingement. .
 - b. I am being treated for the disc problems in my cervical spine at the New England Baptist Hospital in Boston, MA. My physician is Deepak Tandon, M.D.
 - c. After a course of treatment that has included physical therapy, facet block injections and medication, I am still in a great deal of pain,

have numbness in my left arm and hand and have limited function. I have been advised that my only option is surgery, more specifically, disc fusion. I have elected to have the surgery.

- d. I have been referred to Dr. David Banco an Orthopedic Surgeon from the Spine Center at New England Baptist Hospital. I am in hopes that I can schedule surgery in November or December.
- e. I do not know what period of time will be necessary for recovery from the surgery or any period of rehabilitation. It is also uncertain when the surgery will be scheduled. I am respectfully requesting that the trial be continued to February or March of 2006.
- f. I would like to resolve my medical issues prior to the trial of this matter. I have been forced to miss work as a result of the pain and it also disrupts my ability to work when I am in my office or court.
- g. Mr. Depergola has no objection to the issuance of an order of excludable delay under the Speedy Trial Act, 18 U.S.C. § 3161(h)(8)(A) for the period of time from the date of any order continuing the trial until the date of such trial.

Sworn and subscribed to under the pains and penalties of perjury this 3rd day of November, 2005.


Michael L. Foy